CARRIERS OF PASSENGERS—LIMITATION OF LIABILITY—CARMACK AMENDMENT.—It has often been held that a railroad company is not a common carrier, when it enters into a special contract to transport a circus train, and therefore a contract that the railroad company should not be responsible for damages arising from want of care in running the cars, or otherwise, is valid. *Coup* v. *Wabash Ry. Co.*, 56 Mich. 111. It has also been held that in dealing with human life the law will protect it equally whether the carriage is free, or for compensation. *P. & R. R. Co.* v. *Derby*, 14 How. 468. Many cases have supposed that contracts limiting such liability were invalid, even in the case of free passengers, *Williams* v. *Oregon S. L. R. Co.*, 18 Utah 210, but the weight of recent authority is the other way. *Northern Pacific Ry. Co.* v. *Adams*, 192 U. S. 440, reversing 116 Fed. 324. And such contracts have been upheld in the case of express messengers, news agents and sleeping car porters. *B. & O. Ry. Co.* v. *Voigt*, 176 U. S. 498. This is based on the principle that if a carrier is under no duty to carry, and may elect to refuse, then if he does carry he may do it on such terms as he may consent to, and refuse to carry unless he is released from assuming any liability for damages.

Nebraska is one of the states that refuses to permit this limitation, and in *Mancher* v. *C. R. I. and P. R. Co.*, 100 Neb. 237, held that notwithstanding contracts signed by a circus employee releasing and exempting the employer and the carrier from all claims for injuries however sustained, the carrier was liable to such employee for injuries caused by the negligence of the engineer of a train following the circus train. The Nebraska court did not hold that plaintiff, riding under this contract, was a passenger, but he was, at least, a licensee. The contract affecting human life would be strictly construed, and did not excuse the carrier from liability to one lawfully on the right of way and injured by its negligence. The defendant sought to carry this to the Federal court under the Carmack Amendment. But the United States Supreme court, Jan. 7, 1919, dismissed the writ of error on the ground that the Carmack Amendment deals only with the shipment of property. As to limitation of liability in the carriage of passengers the States are still "free to establish their own laws and policies and apply them to such contracts," in accord with the rule of *Pa. R. Co.* v. *Hughes*, 191 U. S. 477.

HIRE-PURCHASE AGREEMENT—CONVERSION—MEASURE OF DAMAGES.—One Miss Nolan held a piano from plaintiffs under a hire-purchase agreement, with option to purchase on payment of the last installment; title to remain in the vendor until such payment had been made. After several installments had been paid, Miss Nolan sold the piano to the defendant, making " a false statutory declaration that the piano was her property." She subsequently disappeared. Plaintiff sued in detinue and alternatively for conversion. The defendant paid into court the sum of 18*l*, the amount still due on the piano. *Held*, plaintiffs entitled to judgment for the return of the piano or the sum of 28*l*, its value. *Whiteley, Limited* v. *Hilt*, (1918), 2 K. B. 115.

By a perfectly logical course of reasoning the court arrives at a correct *legal* conclusion supported by the overwhelming weight of authority but hardly

in accord with that sense of justice and fair dealing which we ordinarily attribute to "the man in the street." The court says that if Miss Nolan had any interest in the piano it must be by virtue of the agreement alone, and inasmuch as she had repudiated the agreement by the fraudulent sale, she had at the date of the sale no interest in the piano which she could transfer to the defendant. This case is differentiated from *Belsize Motor Supply Co.* v. *Cox,* (1914), 1 K. B. 244 and *Donald* v. *Suckling,* (1866), L. R. 1 Q. B. 585, as in these cases the act of the conditional vendee was an injustifiable repledge of the chattel while in the instant case the act was a conversion and fraudulent sale. The result of the decision is, however, that the plaintiff receives about one-third more than the value of his chattel and this at the expense of an innocent vendee of the wrong doer, with the sorry consolation for the defendant that she has a right of action against the absconder. If the verdict of the lower court had been sustained, namely, that "the measure of damages was * * * the amount of the hire-purchase money remaining unpaid" the plaintiff would have received full compensation for what he had lost and the innocent defendant would not have been punished for the fraudulent act of her vendor. This conclusion is justified by the argument of the Ohio court in an analogous case: "The wrong doer * * * [is] estopped from setting up any claim by virtue of the wrong that he has done." 'Against the innocent purchaser from the [wrong doer] the original owner still has "title" to his [property].' But by virtue of what does he now have "title" to the [wrong doer's interest in the property].' "The estopped, so to call it, being created by fraud of wrong, exists only against the one guilty of that fraud or wrong, which the purchaser is not." *Railway Co.* v. *Hutchins,* (1877), 32 Oh. St. 584. Nevertheless the weight of authority is against the Ohio court (Cf. *Bowles Wooden Ware Co.* v. *United States,* (1882), 106 W. S. 432), and possibly the analogy between the cases may be called in question, so our instant case is still law whatever may be said as to its justice.

HUSBAND AND WIFE—CONVEYANCE TO THEM CREATING TENANCY IN COMMON.—By devise land came to "J. W. and to her husband, A. W., and to their heirs and assigns, as tenants in common, to have share and share alike." After death of J. W., her husband having predeceased her, her heirs instituted suit for partition, and a child of A. W. by a former marriage intervened claiming that as to one-half of the land the heirs of A. W. were entitled. *Held,* the devisees took as tenants in common and not as tenants by entireties. *Godman* v. *Greer,* (Del., Orphan's Court, 1918) 105 Atl. 380.

The court seemed to find a great deal of difficulty in arriving at a conclusion the soundness of which cannot admit of much question. Even without the Married Women's Acts a conveyance to parties then husband and wife did not inevitably create a tenancy by entireties. 1 *Preston on Estates,* 132; 2 Blackstone Comm. *182 (Sharswood's Note).—If Preston's view lacked the support of decisions squarely in point, at least there were none opposed thereto. As pointed out in his book, husband and wife were not so much *one* that they could not during the marriage relation own land as tenants in common. In this country there were a few decisions in which,